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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) CASE NO.: 2:13-cr-0733
13 Plaintiff,)
14 v.) DEFENDANT'S UNOPPOSED
15 TOBY G. SCAMMELL,) REQUEST THAT THE
16 Defendant.) CLERK'S OFFICE BE
17) NOTIFIED THAT
18) DEFENDANT HAS SATISFIED
19) HIS RESTITUTION
19) OBLIGATION AND
19) ATTACHED PROPOSED
19) ORDER
19) [NO HEARING REQUIRED]

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28 DEFENDANT'S UNOPPOSED REQUEST THAT THE
CLERK'S OFFICE BE NOTIFIED THAT DEFENDANT
HAS SATISFIED HIS RESTITUTION OBLIGATION
CASE NO.: 2:13-CR-0733

1 Defendant Toby G. Scammell, by and through his counsel, and at the
2 suggestion of the United States Probation Office for the Central District of
3 California, hereby requests that the Court inform the Clerk's Office that the
4 restitution obligation of Mr. Scammell has been satisfied and the records of the
5 Clerk's Office should so reflect. The United States Attorney's Office does not
6 oppose this request.

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BASES FOR REQUEST

9 1. On August 7, 2014, the Court sentenced Mr. Scammell to a three-
10 month term of imprisonment to be followed by a four-year term of supervised
11 release and ordered, *inter alia*, that Mr. Scammell pay restitution in the amount of
12 \$122,494.05. Dkt. No. 82.

13 2. The Plea Agreement filed on April 16, 2014, pursuant to which Mr.
14 Scammell pled guilty approximately four months before his sentencing, provided
15 in relevant part that:

16 “The parties currently believe that the applicable amount of
17 restitution is no greater than \$192,497. The parties further
18 agree, however, that any payments made by defendant in
19 satisfaction of the March 17, 2014 final judgment in the parallel
20 civil matter SEC v. Toby Scammell, 11-cv-06597-DSF-MRW,
21 which requires defendant to pay disgorgement of \$192,497,
22 representing profits gained from the offense conduct in this case
23 . . . shall be credited toward reduction of defendant’s restitution
24 obligation in case. The parties agree that it will be defendant’s
25 obligation to provide notice to the Financial Litigation Unit of
26 the United States Attorney’s Office for the Central District of
27 California in the form of a copy of the check or wire transfer

1 receipt, with reference to the case number in this criminal case,
2 to receive credit against his restitution obligation.”

3 Dkt. No. 63 at ¶ 7. The plea agreement also required Mr. Scammell to “[m]ake
4 restitution at or before the time of sentencing.” *Id.* at ¶ 2(h).

5 3. In satisfaction of paragraphs 7 and 2(h) of the Plea Agreement, on
6 August 4, 2014 (three days before sentencing), Mr. Scammell filed with the
7 Clerk’s Office a Notice of Payment reflecting that he had paid to the Securities and
8 Exchange Commission \$192,497 on July 31, 2014. Dkt. No. 78.

9 4. On August 7, 2014, Judgment was imposed and Mr. Scammell was
10 ordered to pay restitution in the amount of \$122,494.05, Dkt. No. 82 at 1, which
11 was approximately \$70,002.05 less than the \$192,497 Mr. Scammell had already
12 paid, given notice of, and was entitled to be credited toward restitution pursuant to
13 the terms of the Plea Agreement.

14 5. Thereafter, and at various times, Probation Officer Brandon Schneider
15 attempted to confirm with the Clerk’s Office and the United States Attorney’s
16 Office that the restitution obligation has been satisfied in this case. It was
17 suggested by the United States Attorney’s Office to the Probation Office, who
18 relayed the request to the undersigned counsel for Mr. Scammell, that the best
19 means to clarify this issue was by a motion such as this one, which the United
20 States Attorney’s Office would not oppose.

21 6. On approximately March 13, 2017, Assistant United States Attorney
22 Stephen Cazares and United States Probation Officer Brandon Schneider were
23 provided a draft of this motion and informed of the content of the proposed order
24 (which is as stated in the conclusion below), and each indicated his respective
25 office had no opposition to the granting of the request.

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CONCLUSION

2 For the foregoing reasons, and based on the entire record in this case, it
3 should be ordered that the defendant in this case has satisfied his restitution
4 obligation and the records of the Clerk's Office should so reflect.

6 | Dated: March 27, 2017

WILSON SONSINI GOODRICH & ROSATI
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By: /s/ Leo P. Cunningham
Leo P. Cunningham

Attorneys for Defendant
Toby G. Scammell